

No. 3577

IN THE

United States Circuit Court of Appeals

For the Ninth Circuit

MON SINGH, sometimes referred
to as MAN SINGH,

Appellant,

VS.

EDWARD WHITE, as Commissioner of
Immigration for the Port of
San Francisco,

Appellee.

APPELLEE'S REPLY BRIEF

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STATEMENT OF THE CASE.

Man Singh, the appellant herein, was arrested on a warrant issued by the Secretary of Labor dated September 18, 1917, charging "that he was a person likely to become a public charge at the time of his entry into the United States, and that he entered without inspection," on or about the 1st day of November, 1915. (Exhibit A, page 38).

He was given hearings under said warrant (Exhibit A, pages 79-50) at which hearings he was at all times represented by counsel, who filed a brief on his behalf. (Exhibit A, page 95). After a careful review of the evidence (Exhibit A, pages 104-99) the

Secretary of Labor issued a warrant of deportation (Exhibit A, page 108) dated January 21, 1918, in which he found from proofs submitted to him that said Man Singh entered the United States near the Port of Calexico, California, on or about the 1st day of November, 1915, and has been found in the United States in violation of the Immigration Act of February 5, 1917, to wit:

“That he was a person likely to become a public charge at the time of his entry into the United States; and that he entered the United States by land at a place other than a designated port of entry for aliens.”

Thereafter, to wit, April 5, 1918, said Man Singh was delivered into the custody of Edward White, Commissioner of Immigration at the Port of San Francisco, for deportation pursuant to said warrant.

Thereafter, on April 5, 1918, a petition for writ of habeas corpus, No. 16365, was filed in the Southern Division of the United States District Court for the Northern District of California, First Division, to which a demurrer was interposed and filed on April 27, 1918, and on September 19, 1918, an order sustaining said demurrer and denying the writ was filed therein.

Thereafter, to wit: on October 3, 1918, an order allowing an appeal to this Court was signed by the Judge of the Court Below, which said appeal was, by stipulation of the parties and their attorneys, dismissed and the appellant surrendered to the said Commissioner of Immigration for deportation.

Thereafter, to wit: December 9, 1919, a new petition for writ of habeas corpus, No. 16738, was filed in the aforesaid District Court, to which a demurrer was interposed and filed December 19, 1919, and on February 10, 1920, an order sustaining the demurrer and dismissing the petition was filed therein. It is from said order and judgment sustaining the demurrer and dismissing the petition that this appeal is taken.

ARGUMENT.

Counsel for appellant discusses three points in the brief filed in this case.

The first point raised is that when a proceeding has been commenced under the Act of February 20, 1907, and is pending when the act of February 5, 1917, is passed, that the Immigration authorities are prohibited by Section 38 of the last mentioned act from instituting proceedings under said act.

On November 20, 1915, the Secretary of Labor issued his warrant, No. 53991/80, under the Immigration Act of February 20, 1907, for the arrest of one Man Singh charging "that he entered in violation of Section 36 of said Act" (Rule 13) (Exhibit A, page 3). Said warrant was based on the testimony of Dovan Singh, alias Pahn Singh, who testified that he had been smuggled into the United States, together with others, from Mexico by said Man Singh, on or about the 1st day of November, 1915. (Exhibit A, page 5).

It further appears that said Man Singh and one

Boota, alias Gulam Rosool, were later indicted in two separate indictments by a Federal Grand Jury in the United States District Court for the Southern District of California. (Exhibit A, page 7.). That said Man Singh was not brought to trial on said indictments because he was a fugitive from justice, and the witnesses, Dovan Singh and Harman Singh, had been deported before his arrest at Payson, Utah, in September, 1917. (Exhibit A, page 102).

It further appears that the aforesaid warrant was returned to the Bureau of Immigration at Washington, D. C., June 25, 1917, the alien not having been arrested thereunder. (Exhibit A, page 33).

Thereafter, on September 6, 1917, Inspector Plumley of the Salt Lake office, having located Man Singh at Payson, Utah, requested that the aforesaid warrant of arrest be revived (Exhibit A, page 36) and thereafter, on September 18, 1917, a new warrant was issued for the arrest of said Man Singh. (Exhibit A, page 38.) It was under this last named warrant that the present proceedings, resulting in the issuance of the warrant and order of deportation (Exhibit A, page 108) were had.

During all these proceedings (Exhibit A, pages 79-50) the said Man Singh was at all times represented by counsel, who filed a brief in his behalf (Exhibit A, page 95).

Inspector Plumley, in his report, summarizes the evidence in the case and recommends deportation (Exhibit A, page 87) and the Secretary of Labor,

after a careful review of all the evidence (Exhibit A, page 102) ordered the alien's deportation to India (Exhibit A, page 103).

The last proviso of Section 38 of the Act of February 5, 1917, cited by counsel for petitioner, provides as follows:

“PROVIDED FURTHER, that nothing contained in this Act shall be construed to affect any prosecution, suit, action or proceedings brought, or any act, thing or matter, civil or criminal, done or existing, at the time of the taking effect of this Act, *except as mentioned in the third proviso of Section 19 hereof*: but as to all such prosecutions, suits, actions, proceedings, acts, things or matters, the laws or parts of laws, repealed or amended by this Act, are hereby continued in force and effect.”

The third proviso of said Section 19 is as follows:

“PROVIDED FURTHER, that the provisions of this Section, with the exceptions hereinbefore noted, shall be applicable to the classes of aliens therein mentioned, irrespective of the time of their entry into the United States.”

Said Section 19 further provides as follows:

“*That at any time, within five years after entry* any alien who, at the time of entry was a member of one or more of the classes excluded by law; *** at any time within three years after entry, any alien *who shall have entered* the United States by water, at any time or place other than as designated by Immigration officials, or by land at any place other than one designated as a port of entry for aliens by the

Commissioner General of Immigration, or at any time not designated by Immigration officials, *or who enters without inspection*, shall, upon the warrant of the Secretary of Labor, be taken into custody and deported ***.”

It is the Government's contention that the last proviso in Section 38 has no application to any of the classes of aliens subject to arrest and deportation under the provisions of said Section 19 by reason of the exception contained in said proviso, to wit:

“Except as mentioned in the third proviso of Section 19 hereof.”

It will be noted that Man Singh entered the United States without inspection on or about November 1, 1915, and was given his first hearing at Payson, Utah, October 5, 1917 (Exhibit A, page 79) and that neither the three-year period nor the five-year period had elapsed since his unlawful entry.

This Court has already held, in the case of Ng Fung Ho, et al, vs. White, 266 Fed. 765, that said Section 19 is retroactive and that an alien who entered the United States before the passage of said act may be deported under that act if proceedings are instituted within the time limits stated therein.

WAS MAN SINGH A PERSON LIKELY TO BECOME A PUBLIC CHARGE AT THE TIME OF HIS ENTRY INTO THE UNITED STATES?

It is true that there are decisions holding that the term “public charge” is to be applied only to those

who are suffering from some physical disability of such a character as to prevent their earning a livelihood. In the present case, however, the record shows that Man Singh entered the United States from Mexico without inspection on or about November 1, 1915; that at that time he smuggled into the United States several other aliens, and that he was later indicted for violations of Section 37 of the Criminal Code and Section 8 of the Act of February 5, 1917. Having thus violated the provisions of both the Immigration Laws and the Criminal Code, he became a person likely to become a public charge, being subject to arrest and deportation at the expense of the Government, and to a criminal prosecution and imprisonment under said indictments. However, whether or not he was a person likely to become a public charge at the time of his entry is immaterial, as that is only one of the grounds upon which his deportation was ordered. The fact still remains that he did enter without inspection, which of itself is sufficient grounds for his deportation.

DOES THE RECORD CONTAIN ANY COMPETENT OR SUFFICIENT EVIDENCE OF MAN SINGH'S ENTRY WITHOUT INSPECTION AND IS HIS IDENTIFICATION AS THE PERSON MENTIONED IN THE WARRANT SUFFICIENT?

On page 5 of the record, we have the sworn testimony of Dovan Singh that he and Takur Sing

were smuggled into the United States from Mexico by Man Singh November 7, 1915, and describing in detail the method and manner of their surreptitious entry. It further appears that Boota Singh, alias Gulam Rosool, who was jointly indicted with Man Singh was deported to India February 21, 1917, after having served a term of imprisonment on a charge of smuggling aliens into this country, and that the aliens, Dovan Singh and Harman Singh, were deported to Mexico instead of India, the deportation of the two last having been stayed that they might appear as witnesses against Man Singh, who was then a fugitive from justice, if arrested. (Exhibit A, page 102).

AS TO IDENTIFICATION.

It is true that the Immigration record in this case, which is on file as respondent's "Exhibit A," does not show any positive or absolute identification of the alien under arrest being the Man Singh referred to in the testimony of Dovan Singh. The alien at first refused to have his photograph taken, but this objection was later withdrawn, but before said photograph was taken the alien withdrew his consent thereto and it was not until after it became necessary to supply a photograph of the alien to be attached to his passport, which he was obliged to have from the British Consulate in San Francisco before he could be deported, that any photograph was furnished, and this photograph was not furnished until long after the decision rendered in this

case by the Secretary of Labor, and, therefore, does not appear in respondent's "Exhibit A."

However, the Man Singh under arrest answers to the description given by Dovan Singh of the person known to him as Man Singh, who was responsible for bringing him into the United States.

Since the warrant of deportation was issued, Man Singh has admitted his identity and furnished photographs of himself which have been identified, as appears from the following copies of correspondence now on file with the Commissioner of Immigration at San Francisco, California, which correspondence is open to the inspection of this Honorable Court should it so desire.

"U. S. DEPARTMENT OF LABOR,
Immigration Service.

In answering refer to
No. 12020/2589

Office of the Commissioner
Angel Island Station
via Ferry Post Office
San Francisco, Cal.

Jan. 29, 1918.

Inspector in Charge,
U. S. Immigration Service,
Denver, Colorado.

Copy of warrant of deportation No. 53991/80, directing the deportation to India of Rom (or Ram) Singh, has been received from the Bureau. Also, instructions that you should be advised sailing dates of vessels on which alien may be deported. These are as follows:

S.S. "Columbia," February 9

S.S. "China," February 22

S.S. "Venezuela," March 9

It is necessary in cases of this kind that passports be obtained, and for this purpose six photographs of alien, together with the following information should be forwarded to this office:

Name;

Age;

Where born;

Father's name;

Village of residence in India and district in which such village is located;

Physical marks;

Last place of residence;

Date and place of entry into the United States;

Home in India.

Respectfully,

EDWARD WHITE,

Commissioner.

U. S. DEPARTMENT OF LABOR

Immigration Service.

Office of Immigrant Inspector

Salt Lake City, Utah

February 7, 1918.

No. 503/29.

(12020/2589)

Comissioner of Immigration,

Angel Island,

San Francisco, Calif.

In accordance with yours of the 29th ultimo, No. 12020/2589, I enclose six photographs of

MAN SINGH, or Mahan (Mohn) Singh, or
Ram (Rom) Singh, or John Singh;

Age, 48 years;

Born village Sodoonegel, district Ameretsir,
state Punjab, India.

Village of residence and district; The same.

Home in India; The same.

Father—Natah Singh.

Last place of residence—Payson, Utah,
U. S. A.

Entered near Calxico, Calif., about Nov. 7,
1915.

Height—5-8 $\frac{3}{4}$ without shoes.

Weight—167 lbs.

Complexion—Dark Brown.

Eyes—Maroon; deepset.

Hair—Black; slightly gray. Wears hair long
and tied on head. Wears white turban.

Beard—Black, tinged with gray.

Teeth—Poor.

Occupation—Farmer; laborer.

Marks—Prominent snag tooth on right side,
upper jaw, projecting over two others.

Walks with peculiar shuffling gait, as
though with heavy burden; rolls slightly
on right heel. (Not noticeable when
walking a short distance.) Small pit-
marks on face and forehead; pitmarks
on nose.

Speaks Hindu and some English; writes name
in English.

Tracing of signature:

(Signed) Rom Singh

Please advise when the passports are issued
and the alien may be delivered.

Also, I have a Japanese who may be deported.
Is the same procedure necessary?

(Signed) D. A. PLUMLEY.

Inc.

Immigrant Inspector.

U. S. DEPARTMENT OF LABOR
Immigration Service

12020/2589
2603

Office of the Commissioner
San Francisco, Cal.
February 20, 1918.

H. B. M. Consul-General,
261 Market Street,
San Francisco, California.

Sir:

I have the honor to advise you that it is proposed to deport to Calcutta, India, on the SS "Tenyo Maru," scheduled to sail from this port on Monday, February 25, 1918, the two East Indians named below. Following is the data for which please issue the usual passports permitting these two aliens to enter India.

Amer (or Sunder) Singh
35 years of age (born 1882)
Born at Bal, Gullunder, Punjab, India
Weight 152 lbs
Eyes Dark Brown; squinted
Heavy black hair and moustache
Marks—Tattoo mark resembling cross on
back of right wrist
Father—Name will be secured later.

Man Singh, or Mahan (Mohn) Singh, or
Ram, (Rom) Singh
Age 48

Born Sodconegel, Amerestir, Punjab, India
 Home in India—The same
 Father—Natah Singh
 Last place of residence — Payson, Utah,
 U. S. A.

Entered near Calexico, Cal., Nov. 7, 1915,
 Height 5-8 3/4 Weight 167 lbs.
 Complexion — Dark Brown Hair — Black,
 slightly Gray.
 Marks—Small pitmarks on face and forehead.
 Photographs of both aliens inclosed.

Respectfully
 (Signed) EDWARD WHITE
 Commissioner.

F. H. H. M.

Telegraphic Address
 "Breastrail" San Francisco
 Telephone Sutter 5290

BRITISH-CONSULATE GENERAL
 San Francisco
 27th February 1918.

Sir:

With reference to your letter of the 20th instant No. 12020/2589

2603

I have the honour to inform you that in accordance with your request Emergency Certificates of Nationality were recently issued to the two East Indians named and were handed to the representative of your office, who called here some days ago.

In this connection I have the honour to request that you would be so good as to inform

me of the reasons for which the two Indians named were deported. This information is desired for communication to the British authorities concerned.

I have the honour to be,

Sir,

Your obedient servant

(Signed) A. CARNEGIE ROSS

H.B.M. Consul-General.

The Hon. Edward White,
Commissioner of Immigration,
San Francisco, Cal.

M.

U. S. DEPARTMENT OF LABOR
Immigration Service

In answering refer to
No. 12020/2589
2603

Office of the Commissioner
Angel Island Station
via Ferry Post Office
San Francisco, Cal.

March 5, 1918.

British Consul-General,
San Francisco, Cal.

Sir:

Referring to your communication of February 27, I have the honor to advise you that Amer Singh and Man Singh, the two East Indians for whom you issued emergency certificates of nationality, were to have arrived here from Salt Lake City, Utah, for deportation on the S.S. "Tenyo Maru", which sailed Feb. 25th. They, however, were not delivered, and it is un-

known at this time when they will be deported. As per your request, however, you are further advised that in case they are deported it will be on the grounds that they were persons likely to become public charges at the time of their entry into the United States, and that they entered without inspection.

Respectfully,

Exact copy as signed by W. H. Wilkinson
mailed this day by W
Acting Commissioner.

FH/W

U. S. DEPARTMENT OF LABOR
Immigration Service

Office of Immigrant
Inspector

No. 503/29.

Salt Lake City, Utah

(12020/2589)

March 16, 1918.

Commissioner of Immigration,
Angel Island,
San Francisco, Calif.

The attached copy of letter refers to MAN SINGH now under order of deportation, who will probably be delivered to you for the sailing of s/s "Ecquador" on April 6th by Inspector Mansfield, of the Denver office.

This man now has Calcutta exchange for 1264 rupees, which I secured for him to-day, same costing \$456.00. He has about \$49 cash at present.

This for your information.

(Signed) D. A. PLUMLEY
Immigrant Inspector.

U. S. DEPARTMENT OF LABOR
Immigration Service

No. 503/29
Office of Immigrant Inspector
Salt Lake City, Utah
March 16, 1918.

Imperial Valley Bank,
Brawley, Imperial Co., Calif.
(Attention of Mr. M. G. Doud, Cashier.)

Gentlemen:

Complying with your letter of the first instant, I return check to your order for "Balance of account", signed in Hindu by the alien under arrest, who has also impressed thereon the prints of the first three fingers of his right hand; same witnessed by me.

This man is 48 years of age: born village of Sodoonegel, district of Ameretsir, state of Punjab, India; father was Natah Singh; was in partnership with Sodager Singh near Brawley, and left in November 1915; height 5-ft. 9 3/4 in; weight, 167-lbs.; dark brown complexion; maroon eyes, deepset; black hair, slightly gray, worn long and tied up on head; wears white turban; black beard, tinged with gray; occupation is farmer and laborer; poor teeth, has prominent snag tooth on right side, upper jaw, projecting over two others; small pitmarks on face and forehead, pitmarks on nose; walks with peculiar shuffling gait, as though with heavy burden; rolls slightly on right heel. Wanted as MAN SINGH. When arrested was known as Ram Singh and only recently admitted his name is Man (pronounced Mun or Mohn) Singh.

Please remit his balance to U. S. Commissioner of Immigration, Angel Island, San Francisco, Calif., whose reference number is 12020/2589. Kindly send exchange on Calcutta, India, instead of San Francisco draft. I inclose signature and finger prints for you to send to your correspondent bank.

Respectfully,

(Signed) D. A. PLUMLEY

Immigrant Inspector.

IMPERIAL VALLEY BANK

Commercial

Savings

Brawley, Imperial Co., Cal.

March 23rd, 1918.

U. S. Commissioner of Immigration,
Angel Island, San Francisco, Cal.

Gentlemen:

At the request of D. A. Plumly, Immigrant Inspector at Salt Lake City, we are enclosing herewith our San Francisco exchange No. 1203 payable to your order for \$10.93, being the balance to the credit of Man Singh, \$11.03, less exchange charge, 10c.

Mr. Plumly requested that we forward exchange on Calcutta, India, but in as much as we do not issue foreign exchange, we enclose draft as above.

We also enclose note signed August 11th, 1915, by Wahab Din, payable to the order of Man Singh for \$160.00, we having found this note in Man Singh's pass book.

We also enclose finger prints and specimen signature as forwarded to us by the Inspector at

Salt Lake City, who advises us that your reference number is 12020/2589.

Very truly yours,
 (Signed) R. R. STILGENBAUR
 RRS/FB A/Cashier.

U. S. DEPARTMENT OF LABOR
 Immigration Service

Office of Inspector in Charge
 355-357 Federal Building
 No. 3305/10 Denver, Colo.
 May 9th, 1918.

Commissioner of Immigration,
 San Francisco, California.

Referring to your File No. 12020/2589, re Man Singh, who was delivered at your port for deportation on April 5th, there is transmitted herewith copy of letter from the Los Angeles office relative to this alien.

(Signed) HENRY H. MOLER
 M
 WRM/L Inspector in Charge.

U. S. DEPARTMENT OF LABOR
 Immigration Service

Office of Inspector in Charge
 L. A. No. 5541/124-A Calexico, Cal.
 In answering refer to May 4, 1918.
 No. 96/81

Inspector in Charge,
 Immigration Service,
 Los Angeles, California.

Referring to your letter of the 1st instant, No. 5541/124-A. you are advised that we have

repeatedly made inquiries concerning this Hindu alien, and though a number of people recognize the photograph as the Hindu they knew in this valley two or three years ago, none of them can testify that he was known as Mahan Singh.

However, yesterday while in El Centro on other business, Inspectors E. H. Parsons and F. G. Ellis showed this photograph to another Hindu in jail at El Centro, named Kardeen, and also a Hindu named R. Kahn. Both recognized the photograph immediately upon it being shown them, and stated it was Mahan Singh, who they stated operated a ranch about two years ago about three miles northeast of Rockwood, California. R. Kahn also pointed to another Hindu on the streets of El Centro and stated that this third Hindu also knew Mahan Singh. This third Hindu was interviewed by Inspector Ellis, being taken aside for that purpose, and he also immediately recognized the photograph, and stated it was Mahan Singh, who had formerly operated a ranch northeast of Rockwood, California, and who had left that vicinity because the Government officers were looking for him to arrest him for bringing other Hindu boys from Mexico.

As Inspector Ellis had little time at his disposal in El Centro yesterday, a formal statement was not obtained from these Hindus. As Mahan Singh was already awaiting deportation on February 28th, and report was requested by Inspector Plumly in order to assure attorney for the Hindu that Mahan Singh is not being deported in error, it is not thought advisable to

incur considerable expense in making a special trip to Rockwood and vicinity to secure sworn statements from the above mentioned Hindus, it being thought statement of this kind is sufficient for the purposes intended.

Photograph of Mahan Singh is herewith returned.

(Signed) A. A. MUSGRAVE

Inspector in Charge.

In sustaining the demurrer and dismissing the petition in this case his Honor, Rudkin, District Judge, says:

“On the 21st day of January, 1918, the Assistant Secretary of Labor issued his warrant, reciting that the petitioner had been found in the United States in violation of the Immigration Act of February 5, 1917, to wit: ‘That he was a person likely to become a public charge at the time of his entry into the United States; and that he entered the United States by land at a place other than a designated port of entry for aliens,’ and directing that he be deported and returned to India the country whence he came. The petitioner has filed an application for a writ of habeas corpus claiming that the hearing awarded him by the Department was unfair and raising other questions which will be referred to presently. The finding of the Department that the petitioner entered the United States in the year 1915 from the Republic of Mexico by land at a place other than one designated as a port of entry is supported by competent testimony and beyond this the Court is not at liberty to review that finding. In determin-

ing the character of the entry it matters little whether we look to the act of February 20, 1907, or to the act of February 5, 1917, because the provisions of the two acts are substantially the same. See section 36 of the act of 1907 and section 19 of the act of 1917. And if the petitioner entered the United States unlawfully it matters little whether he is deported under the act of 1917 or the act of 1907 because the procedure for the deportation is the same under both acts. The demurrer will therefore be sustained and the petition dismissed. Let an order be entered accordingly.”

We submit that the record in this case does not disclose any unfairness or abuse of discretion on the part of the Immigration officials in the conduct of the hearing accorded this alien.

While the identity of the alien under arrest as the Man Singh referred to by Dovan Singh in his testimony was not as complete and convincing as it might have been when the case was passed upon by the Secretary of Labor, yet the fact that the alien has since admitted his identity we submit that he has not been deprived of any substantial right to which he was entitled, and that no injustice is being done him, and confidently urge and believe that the judgment of the Lower Court should be affirmed.

Respectfully submitted,

FRANK M. SILVA,

United States Attorney,

BEN F. GEIS,

Assistant U. S. Attorney,

Attorneys for Appellee.

